

Sentencing Guidelines Resource Center

What Are Sentencing Guidelines?

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Understanding Sentencing Guidelines

Sentencing guidelines are a set of standards that are generally put in place to establish rational and consistent sentencing practices within a particular jurisdiction. To better understand sentencing guidelines, it is important to understand a little bit about what preceded them.

Prior to the creation and development of sentencing guidelines, all states had a system of *indeterminate sentencing*. Under that system, the legislature defined criminal conduct and established high maximum sentences. Judges had almost complete discretion to impose any sentence up to the statutory maximum, and rather than pronounce a sentence with a specified prison term, the court would pronounce a range of time (e.g., 0-10 years). Parole boards had broad discretion to determine how much of any prison sentence had to be served. Indeterminate sentencing then, was a system in which the sentence was not fixed; rather it was subject to discretion at many points such that the true sentence could not be known until it had been fully served. Moreover, sentences for similarly situation offenders could vary.

In the 1970s, many states began moving towards a system of determinate sentencing. *Determinate sentencing* means that the sentence is a fixed term. It is either not subject to discretion or is subject to a lesser degree of discretion than under indeterminate sentencing. For example, in Minnesota, the Guidelines establish the presumptive prison range, and state law requires that offenders serve two-thirds of the pronounced prison term in prison and one-third on post-prison supervised release, subject to any disciplinary infractions while in prison.¹ Thus, in a determinate sentencing system like this, both the offender and victim have a good idea of how much time the offender will actually serve when the sentence is pronounced.

Sentencing guidelines are one mechanism that can be used to implement determinate sentencing. Sentencing guidelines are a system of recommended sentences based upon offense and offender characteristics.

- **Offense Characteristics:** Most guidelines systems have rules for ranking the seriousness of offenses. This ranking is typically based on how the crime is defined by the legislature, not on how a particular offender committed a particular crime. For example, theft of an unoccupied building would be ranked as less serious than assault with a weapon.
- **Offender Characteristics:** Offender characteristics are things that are unique to a particular offender. Examples include the number and type of prior offenses (i.e., felonies, misdemeanors, juvenile adjudications) or whether the offender was under a custody status at the time of the offense (e.g., probation or jail).

The offense and offender characteristics are then placed on a sentencing grid or are assigned points on a worksheet, and the recommended sentence is derived from those sources. The recommended sentences are generally believed to be appropriate for all “typical” cases sharing the same or similar offense and offender characteristics.

Most sentencing guidelines systems also allow for departure sentences. A *departure* is simply a sentence that is something other than sentence recommended under the guidelines. It may be harsher than called for in the guidelines (e.g., imposing prison when the guidelines call for probation, or imposing a longer prison sentence than recommended) or it may be less harsh than called for in the guidelines (e.g., imposing probation when the guidelines recommend prison, or imposing a shorter prison sentence than recommended). If the crime or the offender is truly “atypical,” meaning there is something about the way this crime was committed or about the particular offender that is different enough from a typical case of this type, then a departure sentence may be more appropriate than the recommended sentence.

Sentencing guidelines systems can typically be characterized by one or more of the following goals and purposes:

- **Rational and Consistent Sentencing Standards:** Sentencing decisions should be well-reasoned, and to the extent possible after considering the unique characteristics of each case, they should be consistent.

- **Proportionality:** Punishment should be appropriate – what the offender deserves – given the seriousness of the offense and the unique characteristics of the offender.
- **Uniformity:** Similar offenders who commit similar crimes should receive similar sentences.
- **Ensuring Public Safety:** The recommended punishments should serve public safety by ensuring that violent offenders are recommended to prison and that the recommended punishments address not only the punishment the offender deserves, but also the punishment that will aid in the offender's rehabilitation and reintegration with society.

Which Guidelines Systems are Included in the Resource Center

In constructing this Resource Center we have looked at the nature and function of sentencing rules, not just the terminology each jurisdiction uses to describe them (for example, Alabama refers to its rules as “standards” rather than “guidelines.”

We define “sentencing guidelines” as sentencing rules that:

- (1) are currently in effect;
- (2) recommend sentences, for most types of crime or at least most felonies, that are deemed to be appropriate in typical cases of that type (i.e., cases that do not present aggravating or mitigating factors that might permit departure from the recommendation);
- (3) were developed initially or later endorsed by a legislatively-created sentencing commission (regardless of whether the rules are embodied in statutes, and even if the sentencing commission ceased to exist at some point after the guidelines went into effect); and that
- (4) judges are legally required to consider (even if the judge is then free to ignore the applicable recommendation), or that it appears judges *are* considering even if they are not required to.

Applying these rules, the Resource Center does not currently include:

- States that formerly had but then repealed guidelines meeting these rules (Louisiana, Missouri, and Wisconsin).
- Statutory determinate sentencing systems like the one in California; these systems were constructed without input from a sentencing commission.

However, when in doubt we have chosen to be more rather than less inclusive. Alaska's guidelines consist of statutory presumptive sentences that have been supplemented with appellate case law adding additional presumptive sentences. We included this system not only because its presumptions and departure rules resemble more typical guidelines procedures, but also because the statutory-judicial guidelines structure that had taken form was then endorsed by a legislatively-created (albeit short-lived) sentencing commission. Florida represents another borderline case because its commission-drafted guidelines were replaced in 1998 with statutory presumptive minimum sentences. We included this state because its current punishment code carries over elements of the former commission-drafted guidelines system. We also chose to include Massachusetts, even though its detailed commission-drafted guidelines have still not received legislative approval, because it appears that judges generally follow the commission's recommended sentences, and the sentencing commission has recently been re-established.

To summarize: the following state and federal systems are included in this Resource Center:

Alabama	Kansas	Oregon
Alaska	Maryland	Pennsylvania
Arkansas	Massachusetts	Tennessee
Delaware	Michigan	Utah
District of Columbia	Minnesota	Virginia
Federal (U.S. courts)	North Carolina	Washington
Florida	Ohio	

¹ Minn. Stat. § 244.05 (2014).

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